ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ARKANSAS.[2]

COURT OF CHANCERY OF DELAWARE.[3]

SUPREME COURT OF ILLINOIS.[4]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[5]

SUPREME COURT OF NEW HAMPSHIRE.[6]

ACTION. See *Patent.*

ARBITRATION. See *Contract.*

ASSIGNMENT. See *Conflict of Laws.*

ATTORNEY. See *Criminal Law.*

BAIL.

What Discharges.—Whatever judicial act in a case deprives a defendant's bail of the right to arrest and surrender him, discharges the bail; and so where an indictment is quashed upon demurrer and the defendant discharged, the bond is discharged, and a reversal of the judgment by the Supreme Court does not revive it: *State* v. *Glenn*, 40 Ark.

CONFLICT OF LAWS. See *Receiver.*

Assignment by Foreign Debtor for Benefit of Creditors.—A decree of court appointing an assignee or receiver to administer a debtor's property for the benefit of his creditors, whatever may be its effect in the state where it is rendered, has no extra-territorial effect on the debtor's real estate in a foreign jurisdiction: *Heyer* v. *Alexander*, 108 Ill.

A non-resident debtor having real estate in this state may pass the same to his assignee by a deed of assignment executed in this state, where such debtor has no creditors resident in this state; but such a conveyance will not be allowed to withdraw the debtor's assets and means from this state, to the detriment or injury of domestic creditors. It is subject to the claims of resident creditors where the property is located: *Id.*

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[1] Prepared expressly for the American Law Register, from the original opinions. The cases will probably appear in 110 U. S.

[2] From B. D. Turner, Esq., Reporter; to appear in 40 Ark. Reports.

[3] From George H. Bates, Esq., Reporter; to appear in 4 Del. Ch. Reports.

[4] From Hon. N. L. Freeman, Reporter; to appear in 108 Ill. Reports.

[5] From John Lathrop, Esq., Reporter; to appear in 135 Mass. Reports.

[6] From Hon. Wm. S. Ladd, Reporter; to appear in 59 N. H. Reports.

CONSTITUTIONAL LAW. See *Municipal Corporation; Office.*

Passage of Bills—Evidence.—When the constitution requires certain formal rules to be complied with by the legislature before a bill become a law, and the appropriate office of the journal is to record the successive steps of legislative action, such journal will be sufficient evidence to overturn an enrolled bill which is in conflict with it; but where the constitution does not require a certain matter (*e. g.*, an amendment) to be entered upon the journal, but the journal shows that the original bill was amended, and is silent as to the rescission of the amendment, and the enrolled bill contains no amendment, this court will presume that the amendment was rescinded: *Chicot County* v. *Davies*, 40 Ark.

Not only the enrolled bill, but the legislative journals, and records and files of the office of the secretary of state, may be looked to for the purpose of ascertaining whether the act was duly passed: *Id.*

Railroad Franchise—Not an Exclusive Right—Competing Lines allowable.—The mere grant of the right to build a railroad between given termini, creates no implied obligation by the state to not thereafter grant the right to build other railroads parallel with it between the same termini; nor does it imply an obligation on behalf of the state that other railroads, with their tracks and switches, shall not thereafter be granted the right to cross the state in a different direction, and thus pass over its tracks and switches: *East St. Louis Con. Railway Co.* v. *East St. Louis Union Railway Co.*, 108 Ill.

CONTRACT. See *Public Policy.*

Revocable License.—Although a revocable license, such as the grant of a privilege necessary to a permanent business, may, by the expenditure of money by the licensee, become a contract which will be enforced by a court of equity, yet this principle must always depend for its application to any particular case upon the presumed intent of the parties that the privilege should be commensurate with the business as a right in all events, and not merely as a voluntary accommodation: *Jackson & Sharp Co.* v. *Phila., W. & B. Railroad*, 4 Del. Ch. Rep.

The erection of a side track connecting with a railroad, at the expense of plaintiff, and the subsequent expenditure of large sums of money by it in the erection of car-works, from which cars were delivered by means of the side track, *held* not to estop the railroad company from revoking their license to connect the side track with the company's track: *Id.*

When Architect's Decision is not Final, though so Expressed in Contract.—Where a building contract provides that in case changes, additions or alterations are required in the work, and made, the price to be paid extra, or deducted therefor, shall be "subject to the valuation of the architect," whose decision shall be final; it is the architect's judgment, and not his arbitrary will, that is made conclusive, and if he acts fraudulently his decision will not conclude the party whom he attempts to wrong: *County of Cook* v. *Harms*, 108 Ill.

Under such a provision in a contract, if it be shown that the architect, in making his decision, has disregarded important, clearly established or obvious facts, of which there is some evidence in the record, the *prima facie* presumption will be that he did so wilfully: *Id.*

CORPORATION. See *Master and Servant.*

Stockholder's Liability for Debts—In what manner Discharged.—Under a statutory provision making the stockholders of a private corporation individually responsible for an amount equal to the amount of stock held by them respectively, in case of the failure of the corporation to make payment of any debt, &c., the stockholders are in effect made partners, and are consequently jointly and severally liable to the creditors of the corporation who are not also stockholders themselves, to the amount of stock held by them respectively: *Thompson* v. *Meisser*, 108 Ill.

As a corollary it follows that one stockholder cannot maintain an action at law on such individual liability against a fellow-stockholder, any more than one partner can sue his co-partner at law on a claim against the firm which he may have purchased: *Id.*

In an action by an outside creditor of a corporation to enforce the individual liability of a stockholder, the latter cannot set off a debt due from the corporation to himself: *Id.*

CRIMINAL LAW. See *Bail.*

Second Trial for same Offence.—The plea of once in jeopardy is not sustained by proof of a former trial of the same indictment, with a verdict of guilty set aside, on motion of defendant, for misconduct of a juror: *State* v. *Blaisdell*, 59 N. H.

Trial in Absence of Defendant—Consent of Attorney.—An attorney's consent to try his client for a misdemeanor in his absence, will be presumed to be by authority of the client in the absence of proof to the contrary: *Martin* v. *The State*, 40 Ark.

The Circuit Court should not permit a defendant to be tried in his absence, even with his consent, where the punishment may be imprisonment; but if it does so, and there is a verdict for imprisonment as part of his punishment, he cannot, after consenting, complain of it: *Id.*

DEBTOR AND CREDITOR. See *Conflict of Laws; Equity.*

DECEDENT'S ESTATE. See *Dower.*

DEED.

Execution of, in Blank.—To make a deed executed in blank operate as a conveyance of the property described in it, two conditions are essential: the blank must be filled by the party authorized to fill it, and this must be done before or at the time of the delivery of the deed to the grantee named: *Allen* v. *Withrow*, S. C. U. S., Oct. Term 1883.

DOWER.

Bequest in lieu of—Deficiency of Assets.—A widow is deemed a purchaser of a devise or bequest to her in lieu of dower, and upon a deficiency of assets to pay both debts and legacies, the legacy to her is not required to abate with the rest, but only liable for such deficiency as may remain after the other assets shall have been exhausted: *Warren* v. *Morris*, 4 Del. Ch. Rep.

It does not matter that her legacy may exceed the value of the dower,

since the testator is the judge for what price he will purchase the renunciation of it: *Id.*

The bequest of the widow of one-third "according to law," does not subject her to abatement with other devisees or legatees in case of a deficiency of assets: *Id.*

EQUITY.

Bill to remove Cloud upon Title to Land—Force of Decree against one served only by Publication—International Law—United States Courts.—A bill having been filed in a state court to remove a cloud upon a title to real estate, one of the defendants was served by publication in accordance with a statute of the state, and a decree was rendered against him. *Held*, That such a decree, being *in personam* merely, can only be supported against a citizen or resident of the state in which it is rendered, by actual service upon him within its jurisdiction; and constructive service by publication in a newspaper is insufficient. The courts of the state might, perhaps, feel bound to give effect to the service made as directed by its statutes. But the judgment would be allowed no force in any other state; and it is of no greater force, as against a citizen of another state, in a court of the United States, though held within the state in which the judgment was rendered: *Hart* v. *Sansom*, S. C. U. S., Oct. Term 1883.

Creditor's Bill—Jurisdiction—No Judgment at Law.—A creditor's bill will not lie in any case upon a purely legal demand, where the creditor has not first exhausted his remedy at law by obtaining a judgment and execution, which prove unavailing by reason of fraudulent conveyances or want of property subject to execution at law. The creditor cannot proceed in equity in the first instance, unless his claim has some equitable element, such as a trust, or the like: *Dormueil* v. *Ward*, 108 Ill.

Where an execution has been returned *nulla bona* upon a judgment at law, and the creditor can show that the debtor has equitable assets which cannot be reached by execution, or that he, or others acting in concert with him, have fraudulently placed obstructions in the way of collecting the demand by execution, a case will then arise for the interposition of a court of equity. This is a part of the ancillary jurisdiction of a court of equity: *Id.*

Enforcement of Decree—Sequestration.—After a failure of the defendant to satisfy a decree, and when an attachment to compel such performance has been ineffectual, the Court of Chancery has power to sequester a chose in action belonging to the defendant: *Hayes* v. *Hayes* 4 Del. Ch. Rep.

The practice in cases of sequestration of rights and credits should be analogous, as nearly as may be, to proceedings under the attachment law: *Id.*

Unconscionable Bargain—Usury—Loan—Partnership.—A written agreement for the advance by Plunkett of $3000 to Dillon for the purchase of land to be improved by subdivision into building lots, and by building on such lots, the title being taken by Dillon and being secured by Dillon's judgment bond, stipulated for the payment, in addition to legal interest, of two-thirds of the profits on the venture, the money so

advanced being at no substantial risk, and the parties by their acts treating it as a loan. *Held*, to be in fact an agreement for a loan, and not a partnership, and as such usurious: *Plunkett* v. *Dillon*, 4 Del. Ch. Rep.

Such an agreement *held also*, to be hard and unconscionable, and, as such, while it remains executory, it will not be enforced by a court of equity: *Id.*

It is an acknowledged exception to the Statute of Usury, that when the principal is put at risk, more than the legal rate of interest may be received; the excess, in such case, being allowed as a consideration for the risk of the principal in addition to the interest, which is the consideration for the forbearance of the debt. But the risk of the principal, to come within this exception, must be a substantial one. And in determining whether it be such, the transaction will be subjected to the most searching scrutiny: *Id.*

The principle upon which equity deals with hard and unconscionable bargains is this: when the contract is already executed, or the party can enforce his advantage at law without the aid of a court of equity, the latter will not interfere to set it aside or to restrain such party on the mere ground that the bargain is hard or unreasonable; but when a hard contract remains executory, and the party not being able to effect his unconscientious advantage at law, seeks the aid of a court of equity, it will not help him: *Id.*

EVIDENCE. See *Constitutional Law.*

FRAUD. See *Sale.*

GUARDIAN AND WARD. See *Surety.*

INFANT.

Avoidance of Contract—Must restore Benefits.—A person seeking to avoid his contract on the ground of infancy, must account for what he has received under it, by restoring or paying the value of whatever remains in specie within his control, and allowing for the benefit derived from whatever cannot be restored in specie: *Bartlett* v. *Bailey*, 59 N. H.

INSURANCE.

Fire—Goods on Steamboat sunk on account of Fire caused by Collision.—A steamboat on which were goods insured against "immediate loss by fire," came into collision with another steamboat. Soon after the collision, a fire, caused by the collision, broke out, which prevented the saving of the goods. The vessel subsequently sank, with the goods insured, before they were touched by the fire. In an action on the policy of insurance, the parties agreed that, in case of recovery by the plaintiff the amount should be a sum stated, unless it should appear, on proper evidence, that this amount should be changed. The judge excluded the evidence of an expert, offered by the defendant, that the goods in the situation they were then in, in a sinking boat, were of no value; and instructed the jury that, if they found that this was a loss by fire within the terms of the policy, they should find as damages the sum agreed upon.

Held, that the defendant had no ground of exception: *N. Y. & Boston Dis. Ex. Co.* v. *Traders' & Mechanics' Ins. Co.*, 135 Mass.

INTEREST. See *Patent.*

INTERNATIONAL LAW. See *Equity.*

JUDICIAL SALE.

Vacation of Decree—Protection of Purchaser.—A purchaser of land sold under a decree which is erroneous but not void, will be protected in his purchase, though the decree be afterwards set aside by direct proceeding to vacate it: *Moore* v. *Woodall*, 40 Ark.

LIBEL.

Communication made to Public Prosecutor absolutely Privileged.—A communication made to a states attorney, whose duty it is "to commence and prosecute" all criminal actions, &c., regarding a charge of larceny against another, which the informer said he wanted to bring before the grand jury, is absolutely privileged: *Vogel* v. *Gruaz*, S. C. U. S., Oct. Term 1883.

LICENSE. See *Contract.*

LIMITATIONS, STATUTE OF.

Part Payment to One of Two Joint Owners—Sunday.—Part payment of a note on Sunday, and an indorsement of it on the same day, are not evidence of a new promise to remove the bar of the Statute of Limitations: *Whitcher* v. *McConnell*, 59 N. H.

A payment upon a note owned by two persons, each having a several interest in it, of the amount owned by one, will not operate as a renewal of the note in favor of the other: *Id.*

MASTER AND SERVANT.

Duty of Master to give Notice of Risks of Employment—Delegation of Duty.—A master's duty of giving notice to his servant of risks to which the latter will be exposed in the course of his employment, when such duty exists, is an absolute one, and is not performed by delegating it to a third person, who, though competent for that purpose, fails to give the proper information: *Wheeler* v. *Wason Mfg. Co.*, 135 Mass.

Who is a Co-employee—Defective Machinery—Employment by Corporation of Competent Superintendent.—If a servant is injured by the breaking of a rope used in hoisting goods, in consequence of the neglect of a fellow servant, who knew of the defective condition of the rope, to supply a new one, in accordance with a duty which the master has imposed upon him, the question whether the fellow servant acted as a fellow servant merely, or as the representative of the master, is a question of law and not of fact: *Johnson* v. *Boston Towboat Co.*, 135 Mass.

A corporation owning a lighter, is bound to use reasonable care in maintaining in suitable condition the appliances used on board the lighter by its servants in hoisting and lowering merchandise; but if it furnishes such appliances, and employs a competent servant to see that they are kept in proper condition, it is not liable for an injury occasioned to one servant by the parting of a rope, in consequence of its

being used for too long a time, and after its defective condition was known to the servant whose duty it was to replace it: *Id.*

Employing Servant without Warning in Dangerous Service.—In an action for personal injuries occasioned to the plaintiff while in the defendant's employ, it appeared that the defendant had contracted with the owners to tear down an old brick building; that one of the walls was built of two courses of brick, each four inches in thickness; and that the inner course supported a chimney extending down to the second floor, but not to the ground. There was evidence tending to show that, on the day of the accident, the defendant's foreman discovered a crack between the outer and the inner courses of the brick where the chimney was; that he notified the defendant of it, he being present in the direction and control of the work; that the foreman called the plaintiff to aid in putting up braces to prevent the wall from falling, and, while they were at work, the wall and chimney fell, carrying away a part of the floor on which they were at work, and injuring the plaintiff. *Held*, That the evidence tended to show personal negligence on the defendant's part in setting the plaintiff to work in a place of peculiar danger, unknown to the plaintiff, without any caution, and should have been submitted to the jury: *Ryan* v. *Tarbox*, 135 Mass.

Injury by Co-employee—Who is Co-employee.—The mere fact that one of a number of servants who are in the habit of working together in the same line of employment for a common master, has power to control and direct the actions of the others with respect to such employment, will not of itself render the master liable for the negligence of the governing servant, resulting in an injury to one of the others, without regard to other circumstances. Each case must depend upon its own circumstances: *C. & A. Railroad Co.* v. *May*, 108 Ill.

If the negligence complained of consists of some act done or omitted by the servant having such authority, which relates to his duty as a co-laborer with those under his control, and which might as readily happen with one of them having no such authority, the common master will not be liable: *Id.*

But where the negligent act arises out of and is the direct result of the exercise of the authority conferred upon him by the master over his co-laborers, the master will be liable. In such case the governing servant is not the fellow-servant of those under his charge with respect to the exercise of such powers: *Id.*

Mortgage.

Endorsement of Notes to bona fide Purchaser—Subsequent Payment of Mortgage.—Where notes secured by mortgages of real estate were endorsed before maturity, and delivered by the mortgagee to the plaintiffs for a valuable and adequate consideration paid by G., to be held as collateral security for G.'s indebtedness to them, it is no defence to a foreclosure suit by the plaintiffs that the notes secured by the mortgage have been paid by the mortgagor to the mortgagee since the assignment to the plaintiffs, and in ignorance of it: *Mead* v. *Leavitt*, 59 N. H.

Municipal Corporation.

Discretionary Powers—When Courts will not Interfere—Rejecting all

Bids for Work.—There can be no doubt (in the absence of any statutory or charter regulation to the contrary) of the full discretion of any person or corporation, even after bids for a proposed work have been received and opened, either wholly to abandon the work or to alter the plan of it, or to change or amend the specifications and issue new ones: *Keogh* v. *Mayor, &c., of Wilmington*, 4 Del. Ch. Rep.

The precise limit of judicial interference with the discretionary powers vested by the legislature in municipal corporations or their officers, is: that the courts may interpose so far as to protect private rights when violated or threatened by the action of these bodies; also to restrain them from the assumption of powers not granted by their charters, and further, to guard the public interests against any corrupt or fraudulent abuse of the powers granted to them. But where no private right is infringed, and the city corporation or its officers are exercising their discretion in good faith, the court will not revise the grounds of their proceedings, nor entertain the suggestion that their action is inexpedient for the public interest: *Id.*

The act of bidding in response to an advertisement containing an express reservation of the right "to reject any or all bids," is, of itself, a consent to this reserved right, and concludes the bidder from any attempt to enforce the acceptance of his bid because it is the lowest: *Id.*

Power to issue Bonds for Subscription to Railroad Company's Stock.—A city council had power, under its charter, "to borrow money on the credit of the city, and issue bonds under the seal of the city therefor." *Held*, That this alone did not confer authority to subscribe to the stock of a railroad company, and issue bonds in payment thereof: *City of Jonesboro* v. *Cairo & St. L. Railroad Co.*, S. C. U. S., Oct. Term 1883.

An election having been held authorizing such subscription and issue of bonds, a subsequent act of the legislature legalized all elections theretofore held in any city, &c., in reference to a subscription to the stock of the road in question, and gave power to the corporate authorities of any city in which such election had been held, and a majority of the votes cast were for subscription, to issue bonds for the amount voted, "notwithstanding any insufficiency or informality or irregularity in such election, or in the notice thereof." *Held*, That the insufficiency of the election was thereby removed, and the issue of the bonds authorized: *Id.*

After the election and the legalizing act, but before the issue of the bonds, the state adopted a constitution which forbade municipalities to become subscribers to the capital stock of any railroad or private corporation, or make donation to or loan their credit in aid of such corporation: "Provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption." *Held*, That the power to subscribe to the stock and issue the bonds was not thereby affected: *Id.*

NEGLIGENCE. See *Master and Servant; Railroad.*

Infant Straying from Home.—A child, nineteen months old, strayed

from its home into an adjoining highway, and was injured by being run over. *Held*, in an action for such injury, that the fact that the child was in the highway unattended, was *prima facie*, but not conclusive evidence of contributory negligence on the part of the person in whose charge it was: *Gibbons* v. *Williams*, 135 Mass.

Officer.

Public—Changing Salary of, during Term—Contract.—When an office is created by the constitution, but the compensation is left to the discretion of the legislature, it may be increased or diminished so as to affect the incumbent, whether it be by fees or by salary: *Humphry* v. *Sadler*, 40 Ark.

The election or appointment to office creates no contract between the state and the officer, which is protected by that clause of the Federal Constitution prohibiting the impairing of contracts: *Id.*

Partition.

None where Title is in Dispute—Ejectment by Co-tenant.—Partition cannot be had of lands held adversely, or the title to which is in dispute, unless the lands be vacant and not in actual possession. Where the co-tenant has been ousted or his rights totally denied by his co-tenant, his remedy is by ejectment, in which he may recover his just proportion of the land and also of the rents and profits: *London* v. *Overby*, 40 Ark.

Partnership. See *Equity; Specific Performance.*

Priority of Partnership Creditors—Sale of Partner's Interest.—The sale by one of two partners of his partnership interest to one who becomes his successor in the firm, does not destroy the priority of the right of a creditor of the original firm to payment of his debt out of the partnership property of the original firm to the extent of the other original partner's interest in that property: *Spurr* v. *Russell*, 59 N. H.

Patent. See *Specific Performance.*

Interest on Damages in Suit for Infringement—Survival of Action for Infringement.—As a general rule a patentee is not entitled to interest on profits made by an infringer, because they are regarded in the light of unliquidated damages; but where a case was sent back to the master in order that certain deductions might be made from the damages: *Held*, That the plaintiff was entitled to interest on the corrected amounts from the date of the master's last report: *Illinois Cent. Railroad Co.* v. *Turrill, Admr., &c.*, S. C. U. S., Oct. Term 1883.

Suits and the right of suit for damages for the infringement of a patent survive, upon the death of the patentee, to his legal representatives: *Id.*

Public Policy. See *Sunday.*

Combination among Bidders to stifle Competition.—An agreement between several parties that one of them shall bid in his own name, at a public sale or the letting of a contract, and shall share the profits, is against public policy and voidable, if either the intention, the effect or

the necessary tendency of the combination be to stifle or limit competition in the bidding: *Woodruff* v. *Berry*, 40 Ark.

RAILROAD. See *Contract; Constitutional Law; Master and Servant.*

Injury to Employee of Contractor from defective Derrick supplied by Railroad.—A railroad corporation made a contract with a person to build a culvert under a highway alongside of its railroad. By the terms of the contract, the corporation furnished a derrick for use in the work. The derrick, while in use in the highway, fell, in consequence of the parting of a guy, which was old and obviously defective when the derrick was delivered by the corporation to the contractor. By the fall, the plaintiff, who was not a servant of the corporation or of the contractor, was injured. *Held*, That these facts would warrant the jury in returning a verdict for the plaintiff against the corporation: *Conlon* v. *Eastern Railroad Co.*, 135 Mass.

Traveller on a Drover's Pass—Rights and Liabilities.—A passenger on a railroad on a drover's pass is a passenger for hire, and has the same rights, and is under the same obligations to conform to the reasonable rules of the company as if he had bought his ticket: *L. R. & Ft. S. Railway* v. *Miles*, 40 Ark.

A railroad station agent has no implied authority to direct a passenger where to ride, and if a cattle drover, by direction of such agent, and without the direction or acquiescence of the conductor, ride upon the top of the cattle car instead of in the passenger car attached to the train, and is there injured by an accident which would not have injured him if in the passenger car, he cannot recover for the injury unless he proves express authority to the agent to give such directions: *Id.*

RECEIVER.

Extent of his Authority—Right of Foreign Receiver to remove Property out of State.—The powers of a receiver are coextensive only with the jurisdiction of the court appointing him, and a foreign receiver will not be permitted, as against the claims of creditors resident in this state, to remove from this state the assets of the debtor, it being the policy of every government to retain in its own hands the property of the debtor until all domestic claims against it have been satisfied: *Chicago, Mil. & St. P. Railway Co.* v. *Keokuk N. L. Packet Co.*, 108 Ill.

But where a receiver has once obtained rightful possession of personal property situate within the jurisdiction of his appointment, which he was appointed to take charge of, he will not be deprived of its possession though he takes it, in the performance of his duty, into a foreign jurisdiction. While there it cannot be taken from his possession by creditors of the insolvent debtor who reside within such jurisdiction: *Id.*

REPLEVIN.

Goods already Replevied.—A defendant in replevin cannot lawfully, while the action is pending, retake the replevied property from the plaintiff on another writ of replevin against him: *Bonney* v. *Smith*, 59 N. H.

SALE.

Fraud—When Title does not Pass.—If A., fraudulently assuming the

name of a reputable merchant in a certain town, buys, in person, goods of another, the property in the goods passes to A., and the seller cannot maintain an action against a common carrier, to whom the carriage of the goods is entrusted, for delivering them to A.: *Edmunds* v. *Merchants' Dis. Trans. Co.*, 135 Mass.

If A., representing himself to be a brother of a reputable merchant in a certain town, buying for him, buys, in person, goods of another, the property in the goods does not pass to A.; and, in an action by the seller against a common carrier, to whom the carriage of the goods is entrusted, for delivering them to A., the carrier cannot justify on the ground that he has delivered them to the owner: *Id.*

SPECIFIC PERFORMANCE.

Personal Property—Patent—Partnership.—It is within the jurisdiction of the Court of Chancery to decree the specific performance of a contract for the assignment of an interest in a patent; *Satterthwait* v. *Marshall*, 4 Del. Ch. Rep.

The true test of the jurisdiction for specific performance is the adequacy or inadequacy of damages as a redress for the breach of the covenant: *Id.*

When, under a contract of sale, from the nature of the chattel interest contracted for, or from any circumstances, a sufficiently certain and adequate redress cannot be afforded by a suit at law, equity will relieve, without respect to the question whether the subject-matter of the contract is real or personal property: *Id.*

The rule that a Court of Equity will not decree the specific performance of an agreement for a partnership, goes only to the extent that the court will not undertake to compel unwilling parties to act in the relation of partners. An agreement for the future execution of formal articles of partnership will be enforced in equity, although after they are executed the court cannot compel the parties to act under them: *Id.*

STATUTE. See *Constitutional Law*

SUNDAY. See *Limitations, Statute of.*

SURETY.

Creditor not bound to pursue Principal.—Under the law of suretyship, the creditor is not bound to active diligence against the principal, and he does not lose his remedy against the surety even by refusing, upon request of the latter, to pursue the principal, though the principal afterwards becomes insolvent: *Wilds* v. *Attix*, 4 Del. Ch. Rep.

There is no general equity of a surety to throw upon the creditor the burden of enforcing performance of the contract by the principal, or to compel the creditor to undertake a lawsuit. It is only on special grounds that equity will interfere with the creditor's election between his double remedy against the principal and surety, as when the principal becomes bankrupt the creditor may be compelled to prove his debt, or where the creditor holds a collateral security which is available to him, but which he could not make so to the surety by assignment, he may be compelled first to resort to that security: *Id.*

WARRANTY.

Implied Warranty that thing sold by Maker is suitable for the purpose intended.—A bridge company having a contract with a railroad company to erect a bridge, and, having partially executed the same, made an arrangement with H., whereby the latter undertook, among other things, to prepare all necessary false work, and by a day named, and in the best manner, to erect the bridge then being constructed by the bridge company—H. to assume and pay for such work and materials as that company had up to that time done and furnished. The false work already done by the bridge company was defective, but its defects could not have been discovered by inspection at the time H. entered into this arrangement. *Held*, That there was an implied warranty upon the part of the bridge company that the false work it did, and which H. agreed to assume and pay for, was suitable and proper for the purposes for which the bridge company knew it was to be used: *Kellogg Bridge Co.* v. *Hamilton*, S. C. U. S., Oct. Term 1883.

NEW LAW BOOKS.

ALDRED.—A Manual on the Law of Mortgage of Real Estate. For the Use of Students and Practitioners. By P. F. ALDRED. 8vo., pp. 182. London: W. Maxwell & Son.

AMOS AND FERARD.—Amos and Ferard on the Law of Fixtures and other Property partaking both of a Real and Personal Nature. 3d ed. Revised and adapted to the present State of the Law. By C. A. FERARD and W. H. ROBERTS. 8vo., pp. 506. London: Stevens & Sons.

BISBEE AND SIMONDS.—The Board of Trade and The Produce Exchange, their History, Methods and Law. For the use of the Legal Profession, Commission Merchants, Brokers and Business Men generally. By L. H. BISBEE and J. C. SIMONDS. 8vo., pp. 435. Chicago: Callaghan & Co.

CURWEN.—A Manual upon the Searching of Records and the Preparation of Abstracts of Titles to Real Property. Illustrated by References to the Statutes of Alabama, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New York, Ohio, Pennsylvania, Tennessee and Wisconsin. By M. E. CURWEN. Revised, enlarged and edited, with Forms and References to Decisions. By W. H. WHITTAKER. 8vo., pp. 264. Cincinnati: Robert Clarke & Co.

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